

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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FRANK S. BAIL AND JOHN TYZBIR AS  
TRUSTEES OF THE LOCAL 1102 HEALTH  
AND BENEFIT FUND AND FRANK S. BAIL  
AND FRAN BURKE AS TRUSTEES OF THE  
LOCAL 1102 RETIREMENT SAVINGS  
FUND,

**ORDER**

09-CV-4191 (ADS) (ETB)

Plaintiffs,

-against-

DOVER HOSPITALITY SERVICES, INC.  
a/k/a DOVER COLLEGE SERVICES,

Defendant.

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**APPEARANCES:**

**Koehler & Issacs, LLP**

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By: Jeffrey A. Meyer, Esq.

Keith J. Gustein, Esq., Of Counsel

**SPATT, District Judge.**

The Trustees of the Local 1102 Health and Benefit Fund and Local 1102 Retirement Savings Fund (“the Funds” or “the Plaintiffs”) commenced this suit, pursuant to Sections 502

and 515 of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. §§ 1132, 1145, against Dover Hospital Services, Inc. a/k/a Dover College Services (“Dover” or “the Defendant) to compel an audit of Dover’s books and records from January 1, 2007 through the present and to collect unpaid contributions.

On July 23, 2012, the Court issued an Order (Dkt. No. 72), which (1) granted the Plaintiffs’ motion for summary judgment to compel an audit of the Defendant’s books and records for the audit period for February 1, 2007 through December 31, 2008; (2) denied without prejudice the Plaintiffs’ motion for summary judgment to compel an audit of the Defendant’s books and records for 2009 and 2010; (3) denied without prejudice the Plaintiffs’ motion for summary judgment to collect unpaid contributions allegedly incurred between September of 2010 and November of 2011; and (4) afforded the Plaintiffs 60 days from the date of the Order to conduct an audit of the Defendant’s books and records for the February 1, 2007 to December 31, 2009 audit period and directed the Plaintiffs, if necessary, to submit a letter to the Court, within 30 days of the completion of the audit, to obtain a trial date on the issues of damages, including renewing their motion for reasonable attorney’s fees and costs.

By letter dated October 18, 2012, the Plaintiffs requested a trial date on the issue of damages and that their motion for reasonable attorney’s fees and costs be renewed. The Plaintiffs informed the Court that on September 19, 2012 they completed an audit of the Defendant’s books and records for the time period of February 1, 2007 through December 31, 2008 (“audit”). According to the Plaintiffs, an audit report demonstrating an alleged total delinquency of approximately \$11,000 to the Plaintiff Funds was generated. On September 19, 2012, the Plaintiff Funds sent the audit report, under cover letter requesting payment of the owed sums, to the Defendant via overnight mail. As of the date of the Plaintiffs’ October 18, 2012

letter, the Defendant had neither paid any part of the audit delinquency nor otherwise contacted the Plaintiffs concerning the audit. To date, the Defendant has not responded to the Plaintiffs' October 18, 2012 letter.

Accordingly, the Court hereby respectfully refers this matter to United States Magistrate Judge E. Thomas Boyle for a recommendation as to whether damages should be awarded, including reasonable attorney's fees and costs. The Clerk of Court is to note the referral.

**SO ORDERED.**

Dated: Central Islip, New York  
October 27, 2012

/s/ Arthur D. Spatt  
ARTHUR D. SPATT  
United States District Judge